

PartChapter 5: General Board Hearing Procedures

Article 1: Application and Definitions

5000.5001 General Application.

(a) This ~~partchapter~~ applies to Board hearings under any of the following ~~tax or fee~~ laws administered by the Board:

- (1) Administration of Franchise and Income Tax Laws
Revenue and Taxation Code §Sections 18401-19802
- (2) Alcoholic Beverage Tax Law
California Constitution Article XX, §Section 22;
Revenue and Taxation Code §Sections 32001-32557
- (3) California Tire Fee
Public Resources Code §Sections 42860-42895;
Revenue and Taxation Code §Sections 55001-55381
- (4) Childhood Lead Poisoning Prevention Fee
Health and Safety Code §Sections 105275-105310;
Revenue and Taxation Code §Sections 43001-43651
- (5) Cigarette and Tobacco Products Tax Law
California Constitution Article XIII B, §Section 12;
Health and Safety Code §Sections 104555-104558;
Revenue and Taxation Code §Sections 30001-30482
- (6) Diesel Fuel Tax Law
Revenue and Taxation Code §Sections 9401-9433 and 60001-60708
- (7) Emergency Telephone Users Surcharge Law
Revenue and Taxation Code §Sections 41001-41176
- (8) Energy Resources Surcharge Law
Revenue and Taxation Code §Sections 40001-40216
- (9) Hazardous Substances Tax Law
Revenue and Taxation Code §Sections 43001-43651
- (10) Integrated Waste Management Fee Law
Public Resources Code §Sections 40000-40201, 44001-44006, and 48000-48008;
Revenue and Taxation Code §Sections 45001-45984
- (11) Marine Invasive Species Fee Collection Law
Public Resources Code §Sections 71200-71271;
Revenue and Taxation Code §Sections 44000-44008, 55001-55381

- (12) Motor Vehicle Fuel Tax Law
California Constitution Article XIX, §Sections 1-9;
Revenue and Taxation Code §Sections 7301-8526
- (13) Natural Gas Surcharge Law
Public Utilities Code §Sections 890-900;
Revenue and Taxation Code §Sections 55001-55381
- (14) Occupational Lead Poisoning Prevention Fee
Health and Safety Code §Sections 105175-105197;
Revenue and Taxation Code §Sections 43001-43651
- (15) Oil Spill Response, Prevention, and Administration Fees Law
Government Code §Sections 8670.1-8670.51.1
Revenue and Taxation Code §Sections 46001-46751
- (16) Private Railroad Car Tax
California Constitution Article XIII, §Section 19;
Revenue and Taxation Code §Sections 11201-11702
- (17) Publicly Owned Property
California Constitution Article XIII, §Section 11(g);
Revenue and Taxation Code §Sections 1840 and 1841
- (18) Sales and Use Tax Law, Bradley-Burns Uniform Sales and Use Tax Law,
and Transactions and Use Tax Law
Revenue and Taxation Code §Sections 6001-7176, 7200-7226, and 7251-
7279.6, respectively
- (19) Senior Citizens Homeowners and Renters Property Tax Assistance Law
Revenue and Taxation Code §Sections 20501-20646
- (20) State-Assessed Property
California Constitution Article XIII, §Section 19;
Revenue and Taxation Code §Sections 721-868, 4876-4880, 5011-5014
- (21) Tax on Insurers Law
California Constitution Article XIII, §Section 28;
Revenue and Taxation Code §Sections 12001-13170
- (22) Timber Yield Tax
Revenue and Taxation Code §Sections 423.5, 431-437, 38101-38908
- (23) Underground Storage Tank Maintenance Fee
Health and Safety Code §Sections 25280-25299.99.3
Revenue and Taxation Code §Sections 50101-50162
- (24) Use Fuel Tax
Revenue and Taxation Code §Sections 8601-9433

(25) Welfare Exemption

California Constitution Article XIII, Section 4(b);

Revenue and Taxation Code Sections 214-214.15, 254.5-254.6, 270-272

- (b) This ~~partchapter~~ sets forth rules of general application for all Board hearings ~~before the conducted pursuant to Board with regard to all of the tax and fee laws listed in subdivision (a) of this section. Where the procedure for a specific tax or fee law differs from the general rule, the more specific procedure will be provided or cross-referenced~~applicable procedure will be described in a subdivision of the section containing the general rule.
- (c) ~~With regard to appeals from actions of the Franchise Tax Board, the rules and procedures set forth in partchapter 4, to the extent applicable, shall apply to appeals from the actions of the Franchise Tax Board~~supersede the rules and procedures in this part. To the extent that provisions in this chapter are in conflict with chapter 4, the provisions of chapter 4 shall control.
- (d) ~~To the extent that regulations provisions in this partchapter are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement shall be controlling.~~

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.
Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,
38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,
Revenue and Taxation Code.
Sections 42475, 42881, Public Resources Code.
History: California Code of Regulations, title 18, section 5071.

5000.5002- Definitions.

The following definitions shall apply to this ~~partchapter~~:

- (a) "Appeals Staff" means an employee or employees of the State Board of Equalization assigned to the Appeals Division of the Legal Department.
- ~~(a)~~(b) "Board" means the Board Mmembers of the State Board of Equalization meeting or acting as a body.
- ~~(b)~~(c) "Board Chair" or "Chair" means the Chair of the State Board of Equalization, whom the Board may choose from time to time.
- ~~(c)~~(d) "Board Member" means an individual Member of the State Board of Equalization, including the Deputy State Controller.
- (e) "Board Staff" ~~or "Board Attorney"~~ means an employee or employees of the State Board of Equalization ~~charged with a responsibility under this part or appearing before the Board in any proceeding.~~

- (f) “Board Proceedings Staff” means an employee or employees of the State Board of Equalization assigned to the Board Proceedings Division of the Legal Department.
- (g) “Brief” means a written document that containsincludes an argument supporting a party’s position, including arguments on how-discussion of, or citations to, laws or regulations, or an argument as to how laws or regulations apply to the facts presented in a party’s mattersupporting a party’s position. Notwithstanding this definition, affidavits and/or declarations submitted by parties, and documents produced by the Appeals Division, including, but not limited to, hearing summaries and final action recommendations, are not briefs.
- (h) “Chief Counsel” means the Chief Counsel of the State Board of Equalization’s Legal Department and any person to whom the Chief Counsel may delegate his or her official duties from time to time.
- (i) “Claimant” means a taxpayer whose matter involves the denial of a claim under any of the laws listed in section 5000.5001. The term “claimant” includes a taxpayer’s authorized representative, where appropriate.
- ~~(h)~~(j) “Clerk of the Board” or “Chief of Board Proceedings” means the Chief of the Board Proceedings Division of the State Board of Equalization’s Legal Department and any person to whom the Chief of Board Proceedings may delegate his or her official duties from time to time.
- ~~(i)~~(k) “Delivery Service” means a trade or business, if such trade or business delivers documents in the ordinary course of its business, makes its delivery services available to the general public, and records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item is delivered, the date on which such item was received by the trade or business for delivery.
- ~~(j)~~(l) “Department” means the Property and Special Taxes Department of the Board of Equalization, Sales and Use Tax Department of the Board of Equalization, Energy Commission, Department of Fish and Game, Franchise Tax Board, Department of Health Services, Department of Insurance, Integrated Waste Management Board, Public Utilities Commission, Department of Toxic Substances Control and Water Resources Control Board, where appropriate.
- ~~(k)~~(m) “Extreme hardship” means that a personan individual exercising ordinary care is unable to or restricted from complyingwould be subject to difficulties such that compliance with a provisionrequirement of this partchapter due to extraordinary circumstances beyond the person’s controlwould be widely perceived as unduly oppressive or grossly unfair.
- ~~(l)~~(n) “Hearing” means a tTaxpayer’s opportunity to appearoral or written presentation before the Board during a Board meeting and present oral arguments regarding issues of fact and law relevant to the taxpayer’s matter.
- (m) “Hearing Representative” means an employee of the Board assigned to the Headquarters Operations Division of the Sales and Use Tax Department.

~~(n)~~(o) "Hearing Summary" is an objective, written document intended to assist the Board in its consideration and decision of a matter~~petition and/or appeal~~ for which an oral hearing has been requested.

~~(o)~~"Party" means the taxpayer and the taxpayer's representative; and the Department as defined in this section. For purposes of local tax reallocation and district tax redistribution appeals, the term "party" means those persons defined as parties in California Code of Regulations, title 18, section 1807 or 1828.

(p) "Petition~~Matter~~" means:

(1) Any petition, including, but not limited to, a petition for redetermination, petition for reassessment, petition for reconsideration of successor liability, petition for review of local tax reallocation inquiries, and/or petition for review of district tax redistribution inquiries;

(2) Claim, including a claim for refund;

(3) Appeal from an action of the Franchise Tax Board and related proceedings provided under chapter 4 on a claim for refund, deficiency assessment, or jeopardy assessment;

(4) Application~~Request~~ for administrative hearing;

(5) Petition for rehearing; and

(6) Any other item scheduled~~matter~~ for administrative decision a or adjudication by the Board hearing in any program listed in section 5000.5001, including, but not limited to, requests for relief of taxes, interest, or penalties.

~~(7) Any correspondence from a taxpayer directed to Board Staff, mailed within 30 days after the notice of determination has been issued, that includes a statement that the taxpayer (A) disagrees with an assessment and/or determination or (B) requests a hearing, shall be accepted as a petition for redetermination. When such a document is accepted as a petition for redetermination, staff shall indicate to the taxpayer any specific deficiencies in the petition and offer the taxpayer a reasonable period of time to perfect the petition.~~

~~(r)~~(q) "Party" means the taxpayer and the Department as defined in this section. For purposes of claims or inquiries regarding the incorrect or non-distribution of local or district taxes, the term "party" means those persons defined as parties in California Code of Regulations, title 18, section 1807 or 1828.

~~(s)~~(r) "Reasonable cause" means such circumstances as~~as~~ would prevent an ordinarily prudent and competent person exercising ordinary care and diligence~~ordinary, diligent business person~~ from complying with a requirement of this division~~this part~~.

~~(t)~~(s) "Tax" means any tax, fee, surcharge, assessment, appraisal~~assessment~~ review, or exemption program administered by the Board.

(s) ~~“Tax Counsel” means an attorney of the Board of Equalization assigned to the Tax and Fee Programs Division of the Legal Department.~~

(t) “Taxpayer” means an individual or business entity that is a taxpayer, feepayer, surcharge payer, appellant, petitioner, claimant, or any other person who has a liability, assessment, or other matter for Board hearing such as an appeal from the actions of the Franchise Tax Board, or who is a person directly interested in any matter before the Board under any of the programs listed in section 5000.5001. A taxpayer is not a party to a claim or inquiry regarding the incorrect or non-distribution of local or district taxes reallocation or district tax redistribution appeal except as provided in California Code of Regulations, title 18, section 1807 or 1828. The term “taxpayer” is also deemed to include, where appropriate, the taxpayer’s authorized representative.

(u) “Section” means a section of title 18 of the California Code of Regulations, unless otherwise specified.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,

38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,

Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

References: Article XIII, section 17 of the California Constitution.

Sections 20, 254.5, 254.6, 742, 748, 1840, 5107, 5148, 6074, 6456, 6538,

6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209,

7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191,

8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429,

12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19104,

19333, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1,

30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362,

30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313,

32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443,

38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102,

40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096,

41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158,

43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491,

45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652,

45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353,

46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116,

50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046,

55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209,

60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507,

60521, 60522, 60581, Revenue and Taxation Code.

California Code of Regulations, title 18, sections 1702, 1705.1.

History: California Code of Regulations, title 18, section 5070.

Article 2: Requirements ~~for~~ Scheduling Board Hearings

SubChapter 1. Meeting Calendars

5000.5003 Board Meetings.

- (a) ~~Monthly Meetings Requirement.~~ The Board ~~shall hold~~ regularly scheduled monthly Board meetings. Board meetings are conducted in Sacramento ~~and~~. The Board is also authorized to hold meetings at other locations within the state ~~and exercises this authority to hold meetings in the Los Angeles and San Diego areas for the convenience of taxpayers or~~ and their representatives residing outside the Sacramento area in the southern part of the State. All hearings on property tax petitions shall be conducted at Board meetings held in Sacramento.
- (b) ~~Special~~ Additional Meetings. At the discretion of the Board Chair, additional special meetings may be conducted ~~held~~ at such times and places as needed within the state.
- (c) Teleconference Board Meetings. When circumstances require, the Board may hold ~~teleconference meetings~~ via teleconference as provided in Government Code section 11123.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.
Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,
38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,
Revenue and Taxation Code.
Sections 42475, 42881, Public Resources Code.
Reference: Section 15609, Government Code.

5000.5004 Annual Adoption of Board Meeting Calendar.

- (a) ~~In September of each year, the Chief of Board Proceedings shall submit to t~~ The Board Members, for their consideration and annually adoption, a Board workload plan ~~and meeting calendar for the following calendar year.~~
- (b) ~~The~~ Within 15 days of adoption, ~~ed~~ the meeting calendar shall be available for viewing by the public on the Board's website at www.boe.ca.gov within 15 day of adoption.
- (c) The Chief of Board Proceedings may cancel a ~~Board meeting~~ portion of a Board meeting listed on a previously adopted meeting calendar ~~day for lack of workload.~~ but only a A majority vote of the Board Members in session may cancel or change a meeting date or location identified on a previously adopted meeting calendar ~~changes.~~ Board Proceedings Staff shall promptly amend the meeting calendar to reflect any changes made pursuant to this subdivision.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.

	<u>Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.</u>
	<u>Sections 42475, 42881, Public Resources Code.</u>
Reference:	<u>Section 15609, Government Code.</u>

SubChapter 2. **Requesting and Scheduling an Oral Hearing**

5000.5005 Right to Oral Hearing.

- (a) Every taxpayer may file a written request for an oral hearing before the Board regarding any matter subject to the provisions of this chapter.
- (b) Written requests for an oral hearing shall be granted where the Board is required to grant an oral hearing on the taxpayer's matter by a statute or regulation, and shall be liberally granted with regard to discretionary matters.
- (c) Business and Special Taxes: A written request for an oral hearing must be filed within 30 days of the date the Appeals Division issues its Decision and Recommendation pursuant to chapter 2 of this division.
- (d) Property Taxes: A written request for an oral hearing must be included in the taxpayer's petition or application pursuant to chapter 3 of this division.
- (e) Appeals from Actions of the Franchise Tax Board: A written request for an oral hearing before the Board shall be filed in accordance with section 4040 of chapter 4 of this division.
- (f) The Board may hold an oral hearing to discuss any matter whether or not an oral hearing has been timely requested in accordance with subdivisions (c), (d), and (e). Except as otherwise provided in any statute or regulation, every taxpayer shall have the right to an oral hearing before the Board upon written request. The taxpayer may make a written request for an oral hearing to the Board Proceeding Division. The request must be made within 30 day of receipt of the Appeals Division's decision.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.

	<u>Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.</u>
	<u>Sections 42475, 42881, Public Resources Code.</u>
Reference:	<u>Sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19104, 19333, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452,</u>

38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581, Revenue and Taxation Code.
California Code of Regulations, title 18, sections 1702, 1705.1.

5000.5005.1- Acknowledgement of Request for Oral Hearing.

- (a) Approximately 30 day after receipt of the Appeal Division's decision on a petition or an appeal, the taxpayer shall receive a letter from Board Proceedings Staff. If Board Staff receives a written request for an oral hearing or confirmation that a previously requested hearing is still desired, the Board Proceedings Division shall issue a letter acknowledging the request for an oral hearing. The acknowledgment letter will indicate whether an oral hearing before the Board has been granted, and, if granted, shall also provide the location where the oral hearing will be scheduled. Upon receipt of the acknowledgment letter, the taxpayer shall contact the Board Proceedings Division upon receipt of the acknowledgment letter if the hearing location should need to be changed.
- (b) Appeals from Actions of the Franchise Tax Board. The Board shall acknowledge requests for oral hearings and schedule such hearings in the manner provided in section 4042 of chapter 4 of this division.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19104, 19333, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801,

46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581, Revenue and Taxation Code, California Code of Regulations, title 18, sections 1702, 1705.1.

5000.5005.2- Consolidation for Hearing or Decision.

- (a) Multiple petitions and/or appeals matters may be consolidated for hearing or decision only if the facts and issues are similar and no substantial right of any party will be prejudiced.
- (b) The Board Members, Appeals Staff, or any party may request a consolidation, or object to a consolidation of, matters for hearings.
- (c) Requests for and objections to the consolidation of matters for hearing or decision must be submitted in writing to the Board Proceedings Division and to all parties to the matters at issue.
- (d) If the Chief Counsel determines that it would be appropriate to consolidate two or more matters as requested, or all of the parties to such matters agree to a consolidation, the Chief of Board Proceedings shall consolidate such matters and notify all of the parties. If the Chief Counsel determines that consolidation is inappropriate, the matters shall not be consolidated regardless of the parties' consent.
- (e) If a party files an objection to consolidation within 15 days after the date the Chief of Board Proceedings issues the notice described in subdivision (d), the Chief of Board Proceedings shall submit the objection to the Board Chair, who shall have discretion to deconsolidate any previously consolidated matters.
- (f) A written request for consolidation should establish that the relevant facts and issues to be heard before the Board are similar in each matter and no right of any party is prejudiced by consolidation.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19104, 19333, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401,

32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581, Revenue and Taxation Code.

History: California Code of Regulations, title 18, sections 1702, 1705.1. California Code of Regulations, title 18, section 5074.

5000.5006 Notice of Board Hearing and Response.

(a) General Procedure.

- (1) Except as provided in paragraph (2) of this subdivision, Board Proceedings Staff shall mail a Notice of Board Hearing along with a Response to Notice of Board Hearing to each party and each party's taxpayer, designated authorized representative, and the Department at least 60 days in advance of the parties' taxpayer's scheduled hearing date.
- (2) With regard to State Assessee and Private Railroad Car Matters, Board Proceedings Staff shall send mail a Notice of Board Hearing along with a Response to Notice of Board Hearing to each party and taxpayer, each party's designated authorized representative, and the Department at least 45 days in advance of the parties' taxpayer's scheduled hearing date.

(b) Notice of Board Hearing. The notice shall contain the following information:

- (1) The name, address, and case identification number of the taxpayerpetitioner and/or appellant;
- (2) The session, date, and location of the hearing;
- (3) The due date of the Response to Notice of Board Hearing-Notice;
- (4) The Board Proceedings Division's contact name, email address, mailing address, telephone number, and fax number; and
- (5) The date the Notice of Board Hearing was mailed.

- (c) Response to Notice of Board Hearing. Each The partytaxpayer or each party's -and the authorized taxpayer's representatives shall return the Response to Notice of Board Hearing not later than 15 days from the date the Notice of Board Hearing was mailed. Each party or party's-The taxpayer- authorizedand the taxpayer's representatives shall respond to the Notice of Board Hearing by indicating that:

- (1) ~~The party or party's taxpayer and/or authorized taxpayer's~~ representatives will appear at the hearing at the time and place noted;
- (2) The ~~party taxpayer~~ waives ~~theits opportunityright~~ to appear ~~under to be~~ represented at the hearing and requests the Board ~~Membersto~~ decide the ~~matterease~~ on the basis of the written record on file and without an oral hearing; or
- (3) The ~~party taxpayer~~ withdraws ~~theirthe party's~~ request for a hearing ~~and accepts the determination of the Board of Equalization.~~

~~A party, or party's representative may a~~Also included a request for an interpreter ~~in in the Response to Notice of Board Hearing notice response is the taxpayer request for an interpreter.~~ Persons participating in Board meetings who speak a language other than English and require an interpreter are entitled to an interpreter ~~at.~~ There is no charge ~~for an interpreter.~~

- (d) Waiver of Notice. ~~The 60-day andor 45-day notice periods~~ may be waived upon agreement among all parties and the Chief ~~Counsel~~Board Proceedings. ~~If the 60-day notice period is waived, the Chief of Board Proceedings shall modify any briefing schedule as appropriate.~~

- (e) Failure to Respond to Notice of Board Hearing.

- (1) If the party or parties who requested an oral hearing ~~all~~ fails to return the Response to Notice of Board Hearing by the deadline stated in the Notice of Board Hearing, the ~~matterease~~ shall be submitted to the Board for decision on the basis of the written record on file without an oral hearing.
- (2) Board Proceedings Staff shall notify the taxpayer, and any state agency that is a party to a matter in writing that the ~~matterease~~ has been removed from the oral hearing calendar and placed on a consent calendar for Board decision.
- (3) ~~Prior to a Board decision, T~~the Chief ~~Counselof Board Proceedings~~, in his or her discretion, may make exceptions to return the ~~matterease~~ to the oral hearing calendar upon a showing of reasonable cause~~extreme hardship~~.
- (4) If the Chief Counsel makes an exception, the Board Proceedings Division shall promptly provide notice to all the parties to such matter.
- ~~(4)In a taxpayer fails to respond to a Notice of Hearing in an appeal to which part 4 applies, the 90-day period specified in subdivision (b) of section 4051, or the 120-day period specified in subdivision (b) of section 4052, whichever is applicable, shall begin on the date the deadline for responding to the Notice of Hearing.~~

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.

	Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.
	Sections 42475, 42881, Public Resources Code.
Reference:	Sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19104, 19333, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581, Revenue and Taxation Code.
History:	California Code of Regulations, title 18, sections 1702, 1705.1. California Code of Regulations, title 18, section 5076.

5000.5007- Dismissal, Deferral, and Postponement of Hearing.

- (a) Dismissal. ~~The Chief of Board Proceedings shall dismiss a matter petition, claim, or appeal under~~ in any or all of the following circumstances:
- (1) The taxpayer or the taxpayer's authorized representative submits a written, signed request for dismissal;
 - (2) The Department submits a written concession of the entire amount of the deficiency, refund, or claim at issue; or
 - (3) ~~The parties taxpayer, or the taxpayer's authorized representative, and the Department~~ submit a written stipulation, signed by all the parties, stipulation in which all both parties agree to dismissal.
- (b) Deferral or Postponement of Hearing or Briefing. A Board Member, Appeals Staff, or any party to a ~~matter petition or an appeal~~ may request that a hearing or the due date of any ~~briefing or related proceedings, including briefing,~~ be deferred or postponed for reasonable cause. The requesting Board Member, Appeals Staff, or party must submit the request in writing to the Chief of Board Proceedings and must document the cause for the request.

- (1) Deferral or Postponement for Short Periods of Time. The Chief of Board Proceedings may grant a deferral or postponement for a period of ~~up to~~ 90 days or less in his or her sole discretion, or for a period of more than 90 days with the consent of the Chief Counsel Board Chair, in any of the following circumstances:
- (A) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to the illness of that person or a member of that person's immediate family;
 - (B) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to an unavoidable scheduling conflict; ~~or~~
 - (C) A party has obtained a new representative who requires additional time to become familiar with the case;-
 - (D) The Chief of Board Proceedings has been informed that all parties desire a deferral or postponement;
 - (E) The Chief of Board Proceedings has been informed by the Franchise Tax Board that the matter is being reviewed for possible settlement consideration; or
 - (F) Any other facts or circumstances determined by the Chief of Board Proceedings and the Chief Counsel to constitute reasonable cause.
- (2) Deferral or Postponement for Formal Settlement Negotiations. The Chief of Board Proceedings may, in his or her discretion, grant a deferral or postponement for an initial period of up to nine months, and thereafter, for additional periods of time in 160 day increments, 180 days if the parties to the ~~matter~~ petition or appeal have entered into formal settlement negotiations.
- (3) Deferral or Postponement for Other Actions. The Chief Counsel may, in his or her discretion, grant a deferral or postponement for a determined period of time due to the following circumstances:
- (A) The Chief Counsel determines that related litigation is pending in state or federal court, the outcome of which is likely to have a bearing on the matter being deferred or postponed.
 - (B) The Chief Counsel determines that unrelated litigation pending in federal or state court contains similar issues to those claimed by parties to a matter and that the outcome of the unrelated litigation is likely to have a bearing on the matter being deferred or postponed.
- (4) Deferral or Postponement for Bankruptcy Action. The Chief of Board Proceedings shall postpone a matter subject to the provisions of chapter 4 of this division upon receiving notice that the taxpayer is a debtor in a bankruptcy proceeding. The Chief of Board Proceedings shall notify the

Board and the parties that the matter is postponed until the taxpayer's bankruptcy is concluded.

~~(3)(5)~~ The Chief Counsel of Board Proceedings may, with the consent of the Board Chair, grant a deferral or postponement for any reason if the circumstances set forth in paragraphs (1) or (2) of this subdivision are not met.

(c) Additional Deferrals or Postponements. After the initial deferral or postponement period has elapsed, the Chief Counsel of Board Proceedings may grant additional deferrals and postponements that are not described in subdivisions (a) and (b) of this section only upon a showing of extreme hardship and only with the consent of the Board Chair.

(d) The Chief of Board Proceedings shall provide written notification to the parties if a deferral or postponement has been granted.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19104, 19333, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581, Revenue and Taxation Code.

California Code of Regulations, title 18, sections 1702, 1705.1.

History: California Code of Regulations, title 18, section 5076.

5000.5008- Representation at Hearings.

- (a) Representation. During the hearing, Taxpayers may be represented at all levels of review by any authorized person or persons, at least eighteen years of age, of the taxpayer's choosing, including, but not limited to, an attorney, appraiser, accountant, bookkeeper, employee or business associate.
- (b) Recognition. The Board shall recognize all authorized representatives who are identified in writing or orally by the taxpayer, and all those who advise the Board in writing that they represent the taxpayer. Recognized Authorized representatives shall be permitted to receive confidential information relating to the taxpayer they represent, and to perform on behalf of the taxpayer all acts that the taxpayer may perform with respect to the review of the matter in preparation for and during the hearing.
- (c) Substitution or Withdrawal. Taxpayers shall promptly notify the Chief of Board Proceedings Division in writing of any substitutions or withdrawals of representation and shall also notify the Franchise Tax Board in all matters subject to the provisions of chapter 4 of this division.
- (d) Suspended or Disbarred Representatives. A person suspended or disbarred from practice before the Franchise Tax Board pursuant to Revenue and Taxation Code section 19523.5 shall not be permitted to represent any taxpayer in a matter subject to the provisions of chapter 4 of this division after the Franchise Tax Board gives the Chief of Board Proceedings notice of the suspension or disbarment.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,

38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,

Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19104, 19333, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211,

60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522,
60581, Revenue and Taxation Code.
California Code of Regulations, title 18, sections 1702, 1705.1.
History: California Code of Regulations, title 18, section 5073.

Subchapter 3. Prehearing Documents and Preparation

5000.5009- Power of Attorney.

(a) Requirement. The Board, or Board Staff, may require a taxpayer party to complete a Board approved Power of Attorney in order to authorize another person or persons to act on the taxpayer's behalf. The Such Power of Attorney shall be a standard form adopted in conjunction with the Franchise Tax Board to be used in either State Board of Equalization or Franchise Tax Board matters.

(b) Form. The Power of Attorney form shall include the following information:

- (1) Taxpayer's name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address;
- (2) The name, address (including e-mail, if any), and telephone and FAX number of the appointed representative(s);
- (3) The tax matters in which the representative is authorized to represent the taxpayer; the extent scope of the representative's authority; and the tax period(s) for which the authorization is granted;
- (4) A statement that the Power of Attorney revokes all prior Powers of Attorney, with any exceptions to the revocation;
- (5) The time period during which the Power of Attorney shall be in effect; and
- (6) The signature(s) and title of all affected taxpayers and the date of signature.

(c) Board Staff shall accept any written document containing all of the provisions required by subdivision (b) in lieu of the standard form described in subdivision (a). If an issue arises as to a representative's authorization under such a document, Board Staff shall forward the document to the Chief Counsel who shall determine its legal effect.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,
38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,
Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5,
6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223,
7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828,
8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636.

12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19104, 19333, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581, Revenue and Taxation Code.

California Code of Regulations, title 18, sections 1702, 1705.1.

History: California Code of Regulations, title 18, section 5073.

5000.5010- Contribution Disclosure Forms.

- (a) Filing Contribution Disclosure Forms. Every Board Member, party, participant and agent must disclose any contribution(s) to Board Members on the record of the adjudicatory proceeding.
- (b) Approximately 45 days prior to the hearing, Board Proceedings Staff shall inquire from all parties, participants, and agents whether any contribution(s) have been made to one or more Board Members. Contribution disclosure forms shall be mailed to all parties, participants, and agents 45 days prior to the scheduled Board meeting.
- (c) Contribution disclosure forms should be returned to the Board Proceedings Division prior to the recipient's scheduled hearing.
- (d) The rules and definitions contained in Government Code section 15626 and California Code of Regulations, title 18, sections 7001- through 7011 apply to this section.

Note: Authority: Section 15606, Government Code.

Reference: Section 15626, Government Code.

History: California Code of Regulations, title 18, section 7011.

5000.5011- Hearing Summary.

- (a) Preparation. In general, ~~T~~the Appeals Division should~~all~~ prepare and submit an objective ~~the~~ Hearing Summary to the Chief of Board Proceedings ~~within~~not later than 405 days prior toof the oral hearing. If the Appeals Division determines that a Hearing Summary requires modification after initial distribution, the Appeals Division shall promptly provide the modifications to the Chief of Board Proceedings.

- (b) Date of Mailing. The Board Proceedings sDivision staff shall mail to the taxpayer and the Department taxpayer a copy of the hHearing sSummary, generally no later than within 305 days prior to of the oral hearing date. Modifications to a Hearing Summary after initial distribution shall be mailed or otherwise provided to the taxpayer and the Department promptly after the modified Hearing Summary is provided to the Chief of Board Proceedings.
- (c) Appeals from Actions of the Franchise Tax Board. The provisions of this chapter shall not apply to hearing summaries prepared for matters subject to the provisions of chapter 4 of this division. Section 4043 of chapter 4 of this division shall apply to such hearing summaries.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,

Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19104, 19333, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581, Revenue and Taxation Code.

California Code of Regulations, title 18, sections 1702, 1705.1.

5000.5012- Additional Briefing.

- (a) Additional Briefing. If the Board, a Board Member, or the Assistant Chief Counsel for the AppealsBoard Division or his or her designeeStaff determines that insufficient briefing or evidence has been provided under chapters 2 or 3 of this division after reviewing issuance of the Hearing Summary, but prior to an oral hearing before the Board, at the Board Board Member or the Assistant Chief Counsel for the Appeals Division or his or her designeeBoard Staff may request additional briefing or evidence from either party in a writing addressed to the Chief of Board Proceedings.

(b) ~~Briefing Schedule and Response to Hearing Summary.~~ Upon receipt of a request for additional briefing described in subdivision (a), the Chief of Board Proceedings shall
~~The Chief of Board Proceedings shall determine if additional briefing is required and set a briefing schedule and notify the parties that additional briefing is required.~~

~~(1) The Department shall file a responses to the Hearing Summary no later than 30 days before the Board hearing;~~

~~(2) The Taxpayer shall file a response to the Hearing Summary no later than 15 days before the Board hearing;~~

~~(3) A brief shall be considered filed on the "date of mailing," as defined in section 5011.~~

(c) General Requirements. All briefs permitted to be filed pursuant to this section shall follow the requirements listed below:

(1) Be Addressed and mailed to the Chief of Board Proceedings;

(2) Be mailed or personally delivered to the other parties;

(3) Length.

(A) Not exceed 30 typed or handwritten, double-spaced 8 ½" by 11" pages, printed on one side only; or

~~(4)~~(B) Not exceed 15 typed or handwritten, single-spaced 8 ½" by 11" pages, printed on one side only;

~~(5)~~(4) Type-font size of at least 10 points or 12 characters per inch;

~~(6)~~(5) The Table of Contents, Table of Authorities, and exhibits are not included in the page count;

~~(6)~~7) Exception. An exception to the foregoing requirements may be granted prior to the deadline for filing ~~at the brief.~~ Exceptions may be requested by submitting a written request establishing reasonable circumstances that justify the necessity for additional pages to the Chief of Board Proceedings. It is at the discretion of the Chief Counsel or his or her designee to approve at the request.

(d) Appeals from the Actions of the Franchise Tax Board: This section does not apply to additional briefing in matters subject to the provisions of chapter 4 of this division. Section 4035 of chapter 4 of this division applies to such additional briefing.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,

38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,

Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19104, 19333, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581, Revenue and Taxation Code.
History: California Code of Regulations, title 18, sections 1702, 1705.1.
California Code of Regulations, title 18, section 5075.

5000.5013 Preparation for Board Presentation of Hearing and Subpoenas.

- (a) Scope of Hearing. ~~An oral hearing is a quasi-judicial proceeding.~~ An oral hearing shall be limited to consideration of the facts, issues, values, or precise elements in dispute in a taxpayer's matter set forth in the petition. The Board may ask the parties questions during an oral hearing, and shall inquire into relevant new matters and afford the parties an opportunity to respond.
- (b) Subpoenas. Subpoenas for the attendance of witnesses or the production of books, records, accounts and papers may be issued in accordance with Section 15613 of the Government Code. Except where a subpoena is issued at the request of a Board Member or Board Staff, a subpoena shall be served on behalf of and at the expense of the person requesting its issuance. An application for a subpoena for the production of books, records, accounts and papers shall be supported by an affidavit as prescribed by Section 1985 of the Code of Civil Procedure. Any affidavit filed in support of an application for a subpoena shall be served with the subpoena.
- ~~(b)(c)~~ (c) Time Allocation. The Chief of Board Proceedings shall generally allocate a total of 35 minutes per hearing in accordance with section 5000.5022: 10 minutes for the taxpayer, 10 minutes for the Department, 5 minutes for the taxpayer's rebuttal; and 10 minutes for Members' questions. The Chief of Board Proceedings shall inform the parties and the Board of the time allocations prior to the hearing.
- ~~(e)(d)~~ (d) Additional Time. A party may request additional time to present a complex matter. A request for additional time must be submitted to the Chief of Board Proceedings Division in writing 15 days prior to the hearing, and stating the

reason(s) ~~why for the necessity of additional time is needed 15 days prior to the hearing.~~ The Chief of Board Proceedings shall submit requests for additional time to the Board Chair for obtain approval of addition time from the Chair. The Board Chair Generally, parties may be granted a party whatever additional time 10 minutes the Board Chair determines the party needs to present a complex matter eases. Board Proceedings sStaff will inform all the parties and the Board in writing as to whether a request for additional time has been granted or denied.

(e) Modification. At the oral hearing, the Board Chair may limit the time for a party's presentation if, in his or her discretion, the Board Chair determines that the party's presentation has no purpose other than to delay the proceedings. If the circumstances warrant, the Board Chair may also grant a party additional time to complete its presentation during the hearing.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,
38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,
Revenue and Taxation Code.
Sections 42475, 42881, Public Resources Code.

Reference: Sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5,
6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7081, 7209,
7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191,
8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429,
12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19104,
19333, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1,
30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362,
30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313,
32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443,
38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102,
40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096,
41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158,
43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491,
45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652,
45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353,
46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116,
50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046,
55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209,
60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507,
60521, 60522, 60581, Revenue and Taxation Code.
California Code of Regulations, title 18, sections 1702, 1705.1.

History: California Code of Regulations, title 18, sections 5077, 5078.

5000.5014. Presentation of Evidence or Exhibits.

(a) Relevant Evidence. Any relevant evidence, including affidavits, declarations under penalty of perjury, and hearsay evidence, may be presented to the Board at a hearing. Settlement offers and information discussed in settlement negotiations are not generally considered relevant evidence. Each party shall be permitted to comment on or respond to any affidavits, ~~or~~ declarations, or any other evidence submitted.

(b) Submission of Evidence. The Board encourages documentary evidence to be submitted to the Board Proceedings Division and to the opposing party ~~not less than~~ within 14 days prior to the hearing in order to facilitate the orderly consideration of the issues at the hearing. Although the Board may permit a party to submit documentary evidence at the hearing, the Board ~~The hearing may~~ is not required to be delayed due to the submission of documentary evidence at or postpone the hearing in order to consider evidence submitted at the hearing. Any objections to the presentation of evidence at the oral hearing and comments on the evidence submitted shall be considered by the Board in assigning weight to such evidence. The Board may refuse to allow the presentation of evidence that it considers irrelevant, untrustworthy, or unduly repetitious.

(c) Stipulation of Facts. The taxpayer and the Department may file, at any time prior to submission of the matter for decision, a stipulation of the facts upon which they agree, the facts which are in dispute, and the reasons for the dispute. The Board or the Chief Counsel may require the parties to file such a stipulation where appropriate.

(d) Official Notice. The Board may take official notice of:

(1) The records maintained by the Board, including tax returns;

(2) Tax returns filed with the Franchise Tax Board for or on behalf of the taxpayer or an affiliated company, together with related records on file with the Franchise Tax Board; and

(3) Any fact which may be judicially noticed by the courts of this State.

The parties may, at the hearing or through a petition for rehearing, refute any matter thus noticed.

~~(e)~~(e) Distribution. Board Proceedings Staff ~~shall~~ will distribute copies of any documentary evidence that has been submitted or officially noticed, or citations and any analysis, any written discussion or arguments concerning the relevance of the evidence, and any stipulations ~~or decision~~ to the Board Members and to each party.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,

38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,

Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19104, 19333, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102,

40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581, Revenue and Taxation Code.

California Code of Regulations, title 18, sections 1702, 1705.1.

History: California Code of Regulations, title 18, section 5079.

5000.5015- Witnesses.

- (a) Witnesses. The taxpayer and the Department may offer the testimony of any person who can provide relevant information concerning the matter, including representatives of the taxpayer and the Department who have knowledge concerning the facts at issue in the matter witnesses to testify.
- (b) As part of the Response to Notice of Board Hearing, The Board encourages the parties to provide the Board Proceedings Division and the opposing party with the name and address of any witness who will testify, and a brief description of the purpose of their testimony, in advance of the hearing.
- (c) The Board Chair may, at the Board Chair's discretion, or upon the request of a party, direct any witnesses to testify under oath or affirmation, and any Board Member or party to a matter may request that any witness testify under oath or affirmation.
- (d) Each party may cross-examine opposing witnesses. However, the Board will not compel witnesses to answer questions in any particular manner.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,

38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,

Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19104, 19333, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158,

43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581, Revenue and Taxation Code.

California Code of Regulations, title 18, sections 1702, 1705.1.

History: California Code of Regulations, title 18, section 5079.

Note: There are three alternative proposals for addressing communications with Board Members. Alternative 1 is Board staff's original proposal, which incorporates the Board's current policy, and continues to be Board staff's recommendation for addressing communications with Board Members. Alternative 2 is a proposal suggested by the Franchise Tax Board's Chief Counsel, John Davies. Alternative 2 requires written communications with Board Members to be provided to all parties to an appeal from the Franchise Tax Board, and provides all the parties to an appeal from the Franchise Tax Board with an opportunity to participate in oral communications with Board Members. Alternative 3 is a proposal suggested by SEIU Local 1000, which requires the Board to disclose certain communications on the record of oral hearings conducted under all of its tax and fee programs. Board staff has not yet decided whether to submit John Davies' or SEIU Local 1000's proposals to the Board for their consideration.

5000.5015.1- Communications with Board Members - Alternative 1: Board Staff's Proposal.

The Board Members shall remain accessible to their constituents, their subordinates, and other governmental agencies, and taxpayers at all times in order to execute their respective constitutional and statutory duties. Therefore, such persons and their authorized representatives, including members of the State Bar, may contact Board Members and Board Staff at any time, including while a matter is ~~ease or controversy~~ pending oral hearing before the Board.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,

38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,

Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 15609.5, 15610, 15623, Government Code.

Section 7081, Revenue and Taxation Code.

5000.5015.1. Communications with Board Members - Alternative 2: FTB Chief Counsel John Davies' Proposal.

(a) Communications Generally. The Board Members shall remain accessible to their constituents, their subordinates, other governmental agencies, and taxpayers, at all times in order to execute their constitutional and statutory duties. Therefore, such persons and their authorized representatives, including members of the State Bar, may contact Board Members and Board Staff at any time, including while a matter involving such persons is awaiting an oral hearing before the Board.

(b) Appeals from the Franchise Tax Board. Persons described in subdivision (a) of this section, including Franchise Tax Board employees, may only communicate with Board Members and their staffs during the pendency of an appeal from an action of the Franchise Tax Board if:

(1) Advance Notice and Opportunity to Participate.

(A) Prior to any oral communication between a party to an appeal or a party's representative and a Board Member or a Board Member's staff regarding any matter at issue in the party's appeal, the Board Member or Board Member's staff shall contact all parties to the appeal and invite them to participate in such communication.

(B) Prior to transmitting, filing, or mailing any written communication to a Board Member or Board Member's staff regarding any matter at issue in the party's appeal, the party or party's representative making the written communication shall provide a copy of the written communication to all of the Board Members and the other parties to such appeal. If a Board Member or Board Member's staff receives a written communication and cannot determine whether copies were provided to all of the Board Members and the other parties to the appeal, the Board Member or Board Member's staff shall promptly provide copies of the written communication to all of the Board Members and all parties to the appeal. The written communication shall also be placed in the public record of the appeal.

(2) Record of Oral Communications. When all the parties to an appeal do not participate in an oral communication regarding a matter at issue in their appeal, the Board Member or Board Member's staff participating in the communication shall promptly prepare a public record of the communication containing:

(A) The date, time, and location of the communication;

(B) The caption of the subject appeal from the action of the Franchise Tax Board;

(C) A description of the communication;

(D) A copy of any written materials provided in conjunction with the communication; and

(E) The names of all persons participating in or present during the oral communication.

(3) Disclosure to Board Members and Parties. The public record of each oral communication prepared pursuant to paragraph (2) of this subdivision shall be provided to all of the Board Members and all of the parties to the appeal prior to any oral hearing before the Board or decision on the merits of the appeal (including a decision on a petition for rehearing), and placed in the public record of the appeal.

(4) Prehearing Inquiry. Prior to the commencement of an oral hearing or the deliberation on a matter for decision, the Chief of Board Proceedings shall ask the Board Members whether they have received any communications that are required to be placed in the public record, but which have not previously been disclosed on the record of the appeal.

(5) Information incorporated into the public record of an oral hearing pursuant to this section shall be made available to the public upon request, unless exempted from disclosure by federal or state law.

(6) For purposes of this subdivision:

(A) The term "communication" includes communications made in any manner, but does not include briefs filed pursuant to chapters 4 or 5, or any communications regarding procedural matters that are not at issue in the appeal;

(B) The Franchise Tax Board is a party to an appeal from an action of the Franchise Tax Board;

(C) An appeal from an action of the Franchise Tax Board is pending from the date the Board receives an appeal filed pursuant to chapter 4, until such time as the Board's decision regarding such appeal becomes final; and

(D) Information is included in or disclosed on the public record if it is incorporated into the minutes of an oral hearing, recorded on the transcript of an oral hearing, or added to the official files maintained by the Board Proceedings Division.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 15609.5, 15610, 15623, Government Code.

5000.5015.1. Communications with Board Members - Alternative 3: SEIU Local 1000's Proposal.

- (a) Communications in General. The Board Members shall remain accessible to their constituents, their subordinates, other governmental agencies, and taxpayers at all times in order to execute their constitutional and statutory duties. Therefore, such persons and their authorized representatives, including members of the State Bar, may contact Board Members and Board Staff at any time, including while a matter involving such persons is awaiting an oral hearing before the Board.
- (b) Communications Regarding Matters Scheduled for Board Hearing.
- (1) Board Members shall not engage in communications described in paragraph (2) of this subdivision regarding a matter scheduled for Board hearing.
- (2) A communication is described in this paragraph if:
- (A) The communication occurs directly between a Board Member and an employee of the Franchise Tax Board, a Board employee that is not assigned to the Board Member's staff, or a taxpayer whose matter is scheduled for Board hearing or a taxpayer's authorized representative;
- (B) The communication is in regard to an issue to be decided by the Board at a scheduled Board hearing;
- (C) The communication is made after the Board Proceedings Division issues the Public Agenda Notice showing the date and time the matter is scheduled for Board hearing;
- (D) The communication is made before the Board hearing on the matter being discussed begins; and
- (E) The communication occurs before the Board hearing on the matter being discussed is postponed for a period requiring the issuance of a new Public Agenda Notice.
- (c) Disclosure of Communications Regarding Matters Scheduled for Board Hearing. If a Board Member engages in a communication described in paragraph (2) of subdivision (b), the Board Member shall describe the communication and disclose the names of all the persons participating in the communication on the record of the Board hearing for the matter to which the communication relates.
- (d) A party to a matter scheduled for Board hearing may request that the Board hearing be postponed in order to allow the requesting party to consider and respond to a communication disclosed pursuant to subdivision (c), but only if that party did not participate in the communication to which the request relates.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 15609.5, 15610, 15623, Government Code.

Section 7081, Revenue and Taxation Code.

Article 3: Public Notification of Board Meeting

5016

~~(a) The Chair approves all Board meeting agendas. Thirty days prior to the meeting date Board Proceedings Division shall submit the agenda to the Chair for approval.~~

~~(b) Any Member may place an item on the Board meeting agenda, subject to the Chair's approval or a majority vote of the Board in session.~~

~~(c) If the Chair denies a Member's request to place an item on the agenda, the Member may bring up the denied item during a Board meeting administrative session and request Board approval to place the item on a future Board meeting agenda. Requests brought before the Board in this manner do not need to be on the Public Agenda Notice.~~

5000.5017 Public Agenda Notice.

~~(a) Not less than Board Proceedings Staff shall mail ten calendar days prior to all Board meetings and Board committee meetings, the a Public Agenda Notice shall be mailed to those interested parties who have requested such the notice in writing. The Public Agenda Notice may be mailed via electronic mail or and the U.S. Postal Service, and shall be mailed at least 10 days prior to the scheduled Board meeting to which it relates. The Public Agenda Notice also shall also be available for public viewing on the Internet at www.boe.ca.gov.~~

(b) The Public Agenda Notice shall include:

(1) The name, address, and telephone number of Board Proceedings Staff ~~any person~~ who can provide further information prior to the meeting;

(2) The address of the Internet site where notices are made available; and

(3) A specific agenda for the meeting, containing a brief description of the matters and other items of business to be transacted ~~conducted~~ or discussed in either open or closed session. A description of a matter or other item of business to be conducted ~~transacted~~ or discussed in closed session shall include a citation ~~to of~~ the specific statutory authority under which a closed session is being held.

(c) No matter or other item of business shall be added to the agenda subsequent to the issuance of the Public Agenda Notice.

(d) The Board Chair's approval is required for the Chief of Board Proceedings to remove a matter or other ~~hearings or agenda items~~ of business from the agenda and hearing calendar after the issuance of the Public Agenda Notice. The Chief of Board Proceedings must show reasonable cause to support removal of ~~remove~~ matters ~~hearings or other items of business~~ from the agenda and hearing calendar ~~items~~.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.
Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,
38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,
Revenue and Taxation Code.
Sections 42475, 42881, Public Resources Code.
Reference: Section 11125, Government Code.

Article 4: Day of the Oral Hearing

5000.5018 **Arrival Time.**

- (a) Sessions. Oral hearings may be scheduled for either the morning or afternoon session before the Board at a regularly scheduled Board meeting. The Board generally schedules m~~More than one matter for oral hearing may be scheduled at each session.~~
- (b) Arrival Time. Taxpayers and their representatives should arrive 30 minutes prior to the start of the session ~~during for~~ which their matter is scheduled for oral hearing, is scheduled as indicated on the Notice of Board Hearing~~Public Agenda Notice.~~

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.
Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,
38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,
Revenue and Taxation Code.
Sections 42475, 42881, Public Resources Code.
Reference: Section 15609, Government Code.

5000.5019 **Sign-In.**

- (a) Sign-In. Thirty (30) minutes before the start of the meeting, Board Proceedings Staff will be at a sign-in desk requesting taxpayers, taxpayers' authorized representatives, and any persons who intend to participate in a matter scheduled for hearing to sign-in and provide the following:
- (1) Appearance Sheet. Board Proceedings Staff will request that taxpayers, taxpayers' authorized representatives, and any person who intends to participate in a matter scheduled for hearing sign an appearance sheet.

The appearance sheet is used to establish whether taxpayers and their representatives ~~have~~ arrived for their oral hearings, and to indicate whether or not such persons made additional contributions to Board Members ~~were made since originally completing their contribution disclosure forms.~~ statements, and as a tool for Appeals Staff to announce the taxpayer, representative, and any participant to the Board before the start of the hearing.

- (2) Contribution Disclosure Forms. If ~~at the party~~ taxpayer, agent, or representative, or any participant has not signed his or her contribution disclosure form prior to ~~the arriving at the Board meeting where their matter is scheduled for hearing~~ date, Board Proceedings Staff will request that such persons complete a contribution disclosure ~~the form be completed at this time.~~

In general, the Board will not hear a matter unless contribution disclosure forms have been completed. For purposes of this subdivision, the terms party, agent, and participant shall have the same meaning as attributed to those terms for purposes of Government Code section 15626, and California Code of Regulations, title 18, sections 7001 through 7011.

- ~~(3)~~(b) Presentation of Evidence and Exhibits. If evidence or exhibits have not been provided ~~previously to the Board Proceedings Division and to the opposing party~~ prior to signing-in, the evidence and exhibits shall be provided to the Board Proceedings Staff at the sign-in desk for distribution to the Board Members, ~~and Board Staff, and the opposing party~~ they shall be provided at the sign-in desk.

- (1) Nine (9) copies of evidence or exhibits should be provided at the sign-in desk.

- ~~(B)~~(2) Appeals Staff shall review evidence and exhibits submitted at the sign-in desk and, if any part of the evidence or exhibits contains the elements of a brief, that part shall not be accepted and shall be returned to the taxpayer or taxpayer's authorized representative.

Exception: A taxpayer who appears at a Board hearing without a representative and who has not employed a representative to prepare a brief or a taxpayer who utilizes a pro bono representative pursuant to an agreement between a law school and the State Board of Equalization, may, at the discretion of the Board, submit a brief the day of the hearing.

- ~~(C)~~(3) Board Proceedings Staff shall label evidence and/or exhibits with the taxpayer's name, case identification number, and date of hearing, and identify that the evidence and/or exhibit is from the taxpayer's or dDepartment's.

- ~~(D)~~(4) The Chief of Board Proceedings shall distribute all evidence and/or exhibits to the opposing party at the sign-in desk. The Chief of ~~lark of the~~ Board Proceedings will distribute all evidence and/or exhibits to the Board Members and to the opposing party as the taxpayer's matter ~~ease~~ is called during the meeting.

- ~~(4)~~(c) Witnesses. The taxpayer, or taxpayer's authorized representative, and the Department, shall make Board Proceedings Staff aware of any witness present to

testify at the hearing. Board Proceedings Staff will verify that the correct contribution disclosure form has been completed by the witness. At this time, Board Proceedings sStaff will inform the witness that the Chief Clerk of the Board Proceedings may, at the discretion of the Board Chair, will swear witnesses by administering an oath.

~~(5)~~(d) Taxpayers' Rights Advocate. The Taxpayers' Rights Advocate Office shall have staff available to assist with taxpayers' questions at all hearings.

If a taxpayer or taxpayer's authorized representative has questions regarding procedures relating to a particular set of circumstances, or believes that a taxpayer's when there are alleged rights were violatedions in thean audit, compliance, or property taxes area,s they may contact the Advocate's Office at:

Taxpayers' Rights Advocate
State bBoard of Equalization
450 N Street, MIC: 70
P.O. Box 942879
Sacramento, CA 95814-0070

~~(6)~~(e) After sign-in is completed, ~~parties, participants, and agents~~the taxpayer, taxpayer's authorized representatives, and any other persons who intend to participate in a matter scheduled for hearing may enter the Board Hearing Room and be seated in the audience. When the matteease is called by the Clerkhief of the Board Proceedings, the ~~party, participant, or agent~~taxpayer, taxpayer's authorized representatives, and any other persons who intend to participate in the matter on the taxpayer's behalf shall come forward and take a seat at the taxpayers' table.

Note: Authority:	<u>Article XIII, section 11 of the California Constitution.</u>
	<u>Section 15606, Government Code.</u>
	<u>Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,</u>
	<u>38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,</u>
	<u>Revenue and Taxation Code.</u>
	<u>Sections 42475, 42881, Public Resources Code.</u>
Reference:	<u>Sections 11124, 15626, Government Code.</u>
	<u>Sections 5904, 7083, Revenue and Taxation Code.</u>

Article 5: Board Meeting

5000.5020 Conduct of the Board Meeting.

Board meetings are conducted in accordance with the following lawsprovisions:

- (a) Bagley-Keene Open Meeting Act (Govt. Code, §§ 11120-11132);
- (b) Quentin L. Kopp Conflict of Interest Act of 1990 (Govt., Code § 15626); and
- (c) Political Reform Act (Govt. Code, § 81000, et seq.); and

The State Board of Equalization's Rules of Order.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.
Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,
38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,
Revenue and Taxation Code.
Sections 42475, 42881, Public Resources Code.
Reference: Sections 11120-11132, 15609, 15626, 81000-91014, Government Code.

5000.5021 Call to Order.

- (a) The Board Chair will call the meeting to order when all Members are present or, at the Board Chair's discretion, when a quorum has been established.
- (1) The State Controller may designate a Deputy State Controller to act on the Board, exercise the State Controller's ~~statutory~~ powers, and perform the State Controller's ~~statutory~~ duties.
- (2) The Deputy State Controller may not participate in ~~matters under the Insurance Tax Law, Motor Vehicle Fuel Tax, Alcoholic Beverage Tax Law,~~ state assessee and private railroad car tax valuations or assessments, reviews of assessments of publicly owned property, or petitions for redetermination or claims for refund filed pursuant to the Insurance Tax Law, Motor Vehicle Fuel Tax Law, or Alcoholic Beverage Tax Law, appeal proceedings, or intra-county equalization appeals. The Deputy State Controller may participate in the adoption and issuance of written findings and decisions on reassessments, petitions, or claims previously heard and decided by the State Controller.
- (b) The Board Chair will take up ~~the matters and other~~ items of business in the order listed on the Public Agenda Notice. However, when the circumstances warrant, the Board Chair may modify the order of business. Any Board Member may object to the Board Chair's decision to modify the order of business. ~~and, An objection shall be sustained if it is seconded by another Board Member and passed by a majority vote of the quorum present at the Board meeting upon such objection, the Board shall vote to confirm or reject the Chair's decision.~~

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.
Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,
38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,
Revenue and Taxation Code.
Sections 42475, 42881, Public Resources Code.
Reference: Section 15609, Government Code.

5000.5022 Order of Business and Time Allocation for Oral Hearings.

- (a) Generally: An oral hearing on a quasi-judicial matter proceeds in the following manner.
- (1) ~~The Clerk of the Board~~ Chief of Board Proceedings shall report on the record whether contribution disclosure statements have been filed in accordance with

the requirements of California Code of Regulations, title 18, section 7011, and whether any disqualifying contributions have been reported.

- (2) ~~The Clerk of the Board~~ Chief of Board Proceedings shall inform all parties to ~~each the quasi-judicial matter and the Board of the time allocation for each the~~ oral hearing, consistent with the provisions of subdivisions (c) and (d) of section 5000.5013. In general, the Chief of Board Proceedings shall allocate:

- (A) 10 minutes for the ~~t~~Taxpayer;
- (B) 10 minutes for the Department;
- (C) 5 minutes for the taxpayer's rebuttal; and
- (D) 10 minutes for Board Members' questions.

~~The Chief of Board Proceedings~~ clerk of the Board shall ~~may~~ make the announcement of time allocation at the beginning of each session of the meeting or each oral hearing conducted during a session.

- (3) ~~Appeals Staff~~ Board Attorney shall introduce the ~~quasi-judicial matter for oral~~ hearing by stating on the record:

- (A) The issues raised in the matter;
- (B) Whether any party is submitting new information or evidence;
- (C) Whether any party is requesting a postponement or deferral;
- (D) ~~Appeals Staff's~~ A recommendation for ~~regarding~~ the adoption of a formal or memorandum opinion, if applicable; and
- (E) Any other information that may be of particular use or interest to the Board Members in deciding the matter before the Board.

- (4) Taxpayers shall state their position and present evidence ~~as they see fit,~~ including by means of visual aids, subject to rulings by the Board Chair.

- (5) The Department shall state its position and present its evidence, including by means of visual aids, subject to rulings by the Board Chair. Taxpayers then shall be given an opportunity to rebuttal.

- (6) ~~The Clerk of the Board~~ Chief of Board Proceedings shall inform the parties and the Board Chair when each party's ~~of the allocations of time~~ has elapsed.

- (b) At the conclusion of the oral hearing the Board may vote to decide the ~~quasi-judicial~~ matter, to take the quasi-judicial matter under consideration and decide it later at the same meeting or at a subsequent meeting, or to continue the hearing to a later date.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 15609, 15626, Government Code.

5000.5022.1 Public Comment.

- (a) Members of the public may address the Board on any matter or other item of business on the agenda item, including any item on the administrative agenda, provided, however, that members of the public may not address individual cases on a consent agenda.
- (b) Notwithstanding subdivision (a) of this section, if an opportunity for the public to comment on a matter or other item of business was provided on the same item at a prior Board committee meeting and the matter or other item of business has not been materially changed since the committee heard the item prior Board meeting, the Board may decline not to hear additional public comment on the same matter or other item of business at a subsequent Board meeting.
- (c) Board Proceedings Staff will request that anyone planning to comment on a matter or other item of business pursuant to this section speak before the Board to sign in prior to the beginning of the session during which the matter or other item of business will be presented to the Board. Signing or completing a public comment appearance sheet is voluntary. A speaker declining to fill out the appearance sheet will not be precluded from speaking to the Board Members.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Section 11125.7, Government Code.

5000.5022.2 Burden of Proof.

- (a) Except as otherwise specifically provided by law, the burden of proof shall ordinarily be upon the taxpayer as to all issues of fact.
- (b) In any proceeding involving the issue of fraud with intent to evade tax, the burden of proof as to that issue shall be upon the Department.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.

	<u>Sections 42475, 42881, Public Resources Code.</u>
Reference:	<u>Section 11125.7, Government Code.</u>
History:	<u>California Code of Regulations, title 18, section 5080.</u>

Article 6: Voting

5000.5023- Quorum.

In order for the Board to make any decision there must be a quorum present.

- (a) Any three Board Members of the Board present at a meeting shall constitute a quorum. For purposes of this chapter, a Board Member is present at a meeting, if the Board Member is participating in the meeting via teleconference pursuant to section 5000.5003.
- (b) When a Board Member is disqualified from participating in a decision under the provisions of the contribution disclosure statute (Government Code Section 15626), or the conflict of interest provisions of the Political Reform Act (Government Code Section 81000, et seq.), that Board Member shall not be counted for purposes of a quorum.
- (c) If the Deputy State Controller is not authorized by Section 7.9 of the Government Code to participate in a decision because the matter before the Board is a Constitutional matter, the Deputy State Controller shall not be counted for purposes of a quorum.

Note: Authority:	<u>Article XIII, section 11 of the California Constitution.</u>
	<u>Section 15606, Government Code.</u>
	<u>Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,</u>
	<u>38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,</u>
	<u>Revenue and Taxation Code.</u>
	<u>Sections 42475, 42881, Public Resources Code.</u>
Reference:	<u>Article XIII, section 17 of the California Constitution.</u>
	<u>Sections 7.9, 11122.5, 15626, 81000-91014, Government Code.</u>
History:	<u>California Code of Regulations, title 18, section 5072.</u>

5000.5024- Voting and Decisions.

- (a) General. ~~After~~ At the conclusion of the oral hearing, the Board may vote to decide the matter, take it under consideration and decide it later at the same meeting or at a subsequent meeting, or continue the hearing to a later date.
- (b) Majority Vote Requirement. A majority vote of the quorum is required for all affirmative decisions or actions of the Board. If there is no objection by any Board Member, a matter may be decided by unanimous consent and without a roll call vote.
- (c) Voting.
 - (1) To call for a vote, a motion setting forth the proposed decision or action of the Board shall be made by one Board Member and seconded by another. A

motion calling for a vote on a matter noticed on the Board's agenda shall not be made until after the matter has been presented to, or, in the case of a closed session matter, discussed by, the Board at the meeting.

(2) Once the roll call for the vote has begun, the discussion of a motion shall end, the roll shall be called by the ~~Clerk of the~~ Chief of Board Proceedings, and the motion shall be passed or defeated at that time unless one or more Board Members are absent and the voting Members are tied, in which case the Board Chair may leave the roll open until the conclusion of the Board meeting in order to allow the absent Member or Members to be present and vote.

(3) Except as provided in paragraph (2) of this subdivision, in order to cast a vote, a Board Member shall be personally present at the time the roll for the vote is called.

(d) ~~Forms Of Motions.~~ A Board Member may make any motion necessary to decide a matter, including, but not limited to:

(1) ~~Submitted for Decision: The Board Members will vote to~~ A motion to take the matter under submission and decided the matter later at the same meeting, or at a subsequent meeting.

(2) A motion to continue the hearing on the matter at a later date.

~~(2)(3) Additional time to submit documentation: The Board Members will vote~~ A motion to allow the taxpayer/petitioner and/or appellant additional time to provide documentation; the Department time to review the documentation provided and respond; and the Appeals Division time to review the taxpayer/petitioner's and/or appellant's documentation and Department's response and provide its recommendation to the Board.

~~(3) With Adjustments: The Board Members will vote to make adjustment to the amount owed, including tax, penalties, and interest.~~

~~(4) CA Victim Compensation and Government Claims Board: The Board Members will~~ A motion to direct Appeals Staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for refund/lief filed by the taxpayer.

~~(5) Formal or Memorandum Opinion: The Board may vote to request~~ A motion to direct Appeals Staff to draft a Memorandum Opinion in a matter subject to the provisions of chapter 2 or 3 of this division, or a Summary Decision or Formal Opinion in a matter subject to the provisions of chapter 4 of this division, to be presented to the Board for adoption as a non-appearance matter. to be published for one or more of the following reasons:

~~(A) Provide interpretation of a new and /or existing law;~~

~~(B) Apply an existing rule to a set of facts significantly different from those found in previously published opinions;~~

~~(C) Modify an existing rule or interpretation;~~

~~(D) Resolves or reconciles an area of confusion or apparent conflict; or~~

~~(E) Involve an issue of continued or special public interest.~~

Following an oral hearing on an appeal from an action of the Franchise Tax Board, the Board may vote to request staff to draft a Formal Opinion pursuant to section 4052 of part 4.

~~The appeal from an action of the Franchise Tax Board is not decided until the Board votes to adopt the formal opinion or subsequently decides the matter without adopting a formal opinion. The draft memorandum opinions and formal opinions shall be placed on a nonappearance adjudicatory calendar for Board consideration.~~

~~(6) Dissenting Opinion: One or more Members may request to have the Appeals Division draft a "Dissenting Opinion" setting forth the rationale of a Board Member or Members who oppose the adoption of a Formal or Memorandum Opinion.~~

~~(6) A motion to impose a Frivolous Appeal Penalty in accordance with section 5000.4054 of chapter 4 of this division, but only : Following an oral hearing on an appeal from an action of the Franchise Tax Board, if the Board determines that the appeal is frivolous or is maintained for the purpose of delay, the Board may impose a penalty on the taxpayer or claimant that filed the appeal pursuant to Revenue and Taxation Code Section 19714 and section 4054 of part 4.~~

~~(7) A motion to Postponed or Deferred: The Board at its discretion may vote to either postpone or defer a hearing for good reasonable cause.~~

~~(8) Expunge the Record: The Board adopts a A motion to expungevacate the record of a previous Board action that is not yet final pursuant to the applicable statute.~~

(e) Dissenting and Concurring Opinions.

(1) If a Memorandum Opinion is presented to the Board for adoption as a non-appearance matter, any Board Member may:

(A) Submit a Dissenting Opinion setting forth the Board Member's rationale for disagreeing with the Memorandum Opinion; or

(B) Submit a Concurring Opinion setting forth the Board Member's rationale for agreeing with the result reached in the decision, if different than the rationale set forth in the Memorandum Opinion.

(2) A Dissenting Opinion or Concurring Opinion submitted pursuant to paragraph (1) of this subdivision shall be deemed to be adopted on the same date as the Memorandum Opinion to which it relates is adopted, and shall be publishable as a supplement to the Memorandum Opinion. A Dissenting Opinion or Concurring Opinion may be cited and relied upon in the same manner as a dissent or concurrence published in an opinion of the California Supreme Court or California Court of Appeals.

(3) If a Formal Opinion is presented to the Board for adoption as a non-appearance matter, section 5000.4053 of chapter 4 of this division shall apply.

(e)(f) Reopening a Vote During the Same Meeting: A previously recorded vote may be reopened at the same meeting or a subsequent meeting provided:

(1) The decision is not final;

(2) A motion to reconsider~~open~~ is made by a Board Member who voted with the majority on the previously recorded vote~~prevailing side~~; and

(3) A majority of the Board Members~~members~~ present vote affirmatively on the motion to reconsider~~open~~; and The matter has been properly noticed under the Bagley-Keene Open Meeting Act.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.
Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,
38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,
Revenue and Taxation Code.
Sections 42475, 42881, Public Resources Code.
Reference: Article XIII, section 17 of the California Constitution.
Sections 7.9, 11122.5, 11125, 15606, Government Code.
History: California Code of Regulations, title 18, section 5081.

Article 7: Post Hearing

5000.5026 Notice of Board Decision.

(a) Generally. All parties to a proceeding shall be notified in writing of the Board's decision. The notice shall contain the determined value, tax, fee, penalty or interest owed.

(1) Business Taxes: In general, aA Notice of Redetermination (or Refund) or other appropriate notice shallwill be mailed to all parties not later thanwithin 45 days from the date of the Board's decision.

(2) Appeals from actions of the Franchise Tax Board: In general, Aa copy of the decision or opinion prepared pursuant to article 5 of partchapter 34 shallwill be mailed to all parties not later thanwithin 73 business days from the date of the Board's decision.

- (3) Property Tax: In general, a Notice of Decision shall will be mailed not later than within 30 days from the date of the Board's decision.
- (b) Finality of Business Taxes Decisions. The Board's decision on a matter subject to the provisions of chapter 2 of this division shall become final 30 days after the official notice of Board action is mailed date of the decision unless, within that 30-day period, one of the following occurs:
- (1) A party to the petition or appeal files a Petition for Rehearing.
 - (2) The Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance and notify all parties of the order.
- (c) Finality of Property Tax Decisions. Decisions on pProperty tTax matters subject to the provisions of chapter 3 of this division petitions, including petitions filed for State Assesseees and Private Railroad Car Companies, Taxable Property of a County, City, or Municipal Corporation, and Property Tax Welfare Exemptions, are final. The Board shall not reconsider or rehear a property tax petition, butand may modify such a decision only to correct a clerical error.
- (d) Appeals from the Franchise Tax Board. The provisions of chapter 4 of this division apply to the With respect to the finality of decisions and requests for rehearings on appeals from actions of the Franchise Tax Board, the more specific procedures and requirements in article 6 of part 3 shall apply.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 254.5, 254.6, 744, 749, 1842, 5148, 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12981, 18533, 19047, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211,

60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581,
Revenue and Taxation Code.

California Code of Regulations, title 18, sections 1702, 1705.1.

History: California Code of Regulations, title 18, sections 5081.2, 5082.

5000.5027- Petition for Rehearing.

- (a) Generally. A taxpayer with a matter subject to the provisions of chapter 2 of this division~~petitioner and/or appellant~~ may file for a Petition for Rehearing not later than within 30 days from the date of the Board's decision of when the official notice of Board action is mailed. The petition shall address new facts or points of law applicable to the case and indicate how they effect the outcome of the ~~matter~~petition or appeal.

The Petition for Rehearing, along with any supporting documents shall be mailed to:

Board Proceedings Division, MIC: 81
State Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA 94279-0081

As an alternative to mailing, the Petition for Rehearing may be hand delivered to the Board's headquarters office located at 450 N Street, Sacramento, CA 95814.

(b) Acceptance or Rejection of the Petition for Rehearing.

- (1) Upon receipt of a Petition for Rehearing, the Chief of Board Proceedings shall determine whether the Petition for Rehearing is timely. The Chief of Board Proceedings may consult with Appeals Staff in making this determination.
- (2) If the Petition for Rehearing is found to be timely, the Chief of Board Proceedings shall accept the Petition for Rehearing and mail a letter to all parties acknowledging the acceptance.
- (3) If the Chief of Board Proceedings determines that the Petition for Rehearing is found to be not timely, the Chief of Board Proceedings shall reject the Petition for Rehearing and advise ~~notify the taxpayer~~petitioner of any alternative rights or remedies.
- (4) Generally, a ~~P~~petition for Rehearing is granted only in matter~~seases~~ where:
 - (A) An irregularity in the Board's proceedings prevented fair consideration of the matter~~ease~~;
 - (B) An accident or surprise occurs, which ~~and it~~ could not have been prevented by ordinary caution;

(C) There is newly discovered, relevant evidence, which the party requesting the rehearing could not have reasonably discovered and provided prior to the Board's decision; or

(D) There is insufficient evidence to justify the decision or the decision is contrary to law.

(c) Chapter 4 of this division applies to Petitions for Rehearing filed with regard to appeals from the actions of the Franchise Tax Board.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19134, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581, Revenue and Taxation Code.

California Code of Regulations, title 18, sections 1702, 1705.1.

History: California Code of Regulations, title 18, sections 5082, 5082.1.

5000.5028-- Recommendation ~~Decision~~ on Petition for Rehearing.

- (a) In general, ~~the~~ Appeals Division ~~shall~~ should prepare and submit a ~~Decision~~ recommendation to grant or deny on a Petition for Rehearing to the Chief of Board Proceedings and parties to the matter at issue generally not later than ~~within~~ 4590 days from the date of the letter of ~~acceptance~~ to the Petition for Rehearing.
- (b) The ~~recommendation~~ ~~Decision~~ on Petition for Rehearing shall be submitted to the Board for adoption as a non-appearance matter.
- (c) The Chief of Board Proceedings shall notify all the parties to the matter at issue ~~to a proceeding~~ of the Board's decision.

- (1) If the Board grants a rehearing based on the recommendation of the Appeals Division, or another rationale, then the Board's prior decision shall be held in abeyance pending the resolution of the rehearing.
- (2) If the Board denies a rehearing based on the recommendation of the Appeals Division, or another rationale, then the Board's prior ~~Decision on Petition for Rehearing~~ shall become final upon the passage of 30 days from the date the Chief of Board Proceedings mails the notice of the denial of the Petition for Rehearing.

(d) Chapter 4 of this division applies to Petitions for Rehearing with regard to appeals from the actions of the Franchise Tax Board.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19134, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581, Revenue and Taxation Code.

California Code of Regulations, title 18, sections 1702, 1705.1.

History: California Code of Regulations, title 18, section 5082.1.

5000.5029- Rehearings.

- (a) If the Board grants a rehearing in a matter subject to the provisions of chapter 2 of this division, the Chief of Board Proceedings shall:

(1) Consult with the Appeals Staff to determine a briefing schedule appropriate for the rehearing; and

(b)(2) ~~The Chief of Board Proceedings shall~~ inform all parties regarding such briefing schedule in writing.

~~(c) At the conclusion of the briefing schedule, the provisions Article 2 shall apply.~~

(b) The provisions of chapter 4 of this division shall apply to rehearings granted in appeals from actions of the Franchise Tax Board.

Note: Authority: Article XIII, section 11 of the California Constitution.

Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,

38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,

Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981,
7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828,
8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431,
12636, 12637, 12951, 12977, 19048, 19104, 19134, 19346, 20645, 30175,
30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282,
30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5,
32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433,
38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631,
40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121,
41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107,
43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451,
43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352,
45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302,
46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4,
50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044,
55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224,
55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501,
60502, 60521, 60581, Revenue and Taxation Code.

California Code of Regulations, title 18, sections 1702, 1705.1.

5030.—

~~After all options of appeal to the State Board of Equalization have been exhausted, the taxpayer may choose to pursue further consideration of the case by filing an action with the superior court, subject to statutory requirements.~~

Article 8: Correspondence and Public Documents

5000.5031: Mailing Address.

Unless otherwise directed, taxpayers should direct all correspondences during the hearing process to the Board Proceedings Division at the following address:

Board Proceedings Division, MIC: 81
State Board of Equalization
450 N Street
P. O. Box 942879
Sacramento, CA 94279-0081

As an alternative to mailing, the taxpayer may personally deliver materials to the Board's headquarters office located at 450 N Street, Sacramento, CA 95814.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.
Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,
38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,
Revenue and Taxation Code.
Sections 42475, 42881, Public Resources Code.
History: California Code of Regulations, title 18, section 5071.

5000.5032- Timeliness of Documents.

- (a) A document or other correspondence shall be timely if it is mailed to or received at the headquarters office of the State Board of Equalization within the time specified by the particular statute or regulation under which the document is filed.
- (b) In the absence of other evidence, the post-mark date or the date of delivery to a delivery service, as defined in section 5000.5002~~4000~~ of ~~article 1~~ of this ~~part~~chapter, shall be considered the mailing date. If the last day for mailing or delivering a document falls on a Saturday, Sunday or holiday, the time for mailing or delivering such document shall be extended to the next business day.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.
Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,
38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,
Revenue and Taxation Code.
Sections 42475, 42881, Public Resources Code.
Reference: Section 724, Revenue and Taxation Code.
History: California Code of Regulations, title 18, section 5074.5.

Note: There are two proposals addressing the disclosure of information relevant to a tax or fee payer's oral hearing before the Board. Alternative 1 represents the Board's current policy and is contained in the version of section 5000.5033 provided immediately below. Alternative 2 represents a revision to the Board's current policy, which would permit certain additional information to be disclosed, depending upon the tax or fee program at issue. Alternative 2 is comprised of four sections (5000.5033-5000.5033.3) and immediately follows Alternative 1. Board staff's recommendation to the Board is set forth in Alternative 2.

5000.5033- Public Records (First Alternative).

- (a) Meetings of the Board are held in accordance with the Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132).
- (b) ~~Public Agenda Notices issued for, minutes and transcripts of public meetings of the Board, and documents incorporated into the record of oral hearings conducted during open session at record by reference, and documents distributed to Board Members for discussion or consideration at a public meetings are public records and open to public~~

inspection, unless exempted from disclosure by state or federal law. Documents exempted from disclosure include, but are not limited to, memoranda from attorneys in the Board's Legal Department Staff and the Attorney General to Board Members that are confidential communications between client and lawyer as defined in Section 952 of the Evidence Code.

- (c) Minutes of public meetings are the official record of each meeting. Minutes are presented to the Board for approval. The approved minutes are posted to the Internet at www.boe.ca.gov and a complete set of approved minutes are bound into one or more volumes. The bound volumes of Board minutes are the permanent record of Board actions. They are available for review in the Board Proceedings Division and the State Archives.

(d) Transcripts.

- (1) In general, the Board records its oral hearings. However, the recordings of oral hearings are not normally transcribed. Transcripts of hearings, administrative sessions, and Chief Counsel Matters are prepared only upon written request.
- (2) Interested persons may submit a written request for Board Staff to prepare transcripts described in paragraph (1) of this subdivision asking that such matters be transcribed. Such requests shall specifically identify the matters to be transcribed.
- (3) ~~If a request to transcribe a recorded hearing is granted, the Board will charge a fee to prepare the requested transcripts in accordance with section 5000.5034.~~

- (4) Written request for a transcript should be directed to:

State Board of Equalization
Attn: Transcript Coordinator
Board Proceedings Division, MIC: 810
P. O. Box 942879
Sacramento, CA 94279-00810

- (5) Any transcript prepared pursuant to this section ~~as a result of a Board hearing~~ is a public record and subject to disclosure.
- (6) Completed transcripts and untranscribed shorthand notes (and recordings) are retained up to 12 years following the hearing date. Written requests for copies of previously completed transcripts should be sent to the address provided in paragraph (4) of this subdivision. The Board shall charge a fee in accordance with section 5000.5034 for copying a completed transcript.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.

	<u>Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.</u>
	<u>Sections 42475, 42881, Public Resources Code.</u>
Reference:	<u>Article XIII, section 11 of the California Constitution.</u>
	<u>Sections 6254, 11124.1, 11125.1, 15606, 15619, Government Code.</u>
	<u>Sections 251, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609, 42475, 42881, Revenue and Taxation Code.</u>
	<u>Sections 42475, 42881, Public Resources Code.</u>
History:	<u>California Code of Regulations, title 18, section 5083, 5085.</u>

Note: If sections 5000.5033-5000.5033.3 (Second Alternative) are adopted, section 5000.5033 (First Alternative) will be deleted.

5000.5033. Hearing Record (Second Alternative, Sections 5033-5033.3).

- (a) Meetings of the Board are held in accordance with the Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132). Public Agenda Notices issued for, minutes and transcripts of, and documents incorporated into the record of ~~adjudicatory~~ oral hearings conducted during open session at ~~a public meetings~~ are public records and open to public inspection. Documents to which a waiver described in section 5000.5033.1 applies are also disclosable public records.
- (b) Minutes of public meetings are the official record of each meeting. Minutes are presented to the Board for approval. The approved minutes are posted ~~on~~ to the Internet at www.boe.ca.gov and a complete set of approved minutes ~~are~~ is bound into one or more volumes. The bound volumes of Board minutes are the permanent record of Board actions. They are available for review in the Board Proceedings Division and the State Archives.
- (c) Transcripts.
 - (1) In general, ~~t~~The Board records its oral hearings. However, ~~but does the recordings are not generally transcribed, its oral hearings.~~ Transcripts of hearings, administrative sessions, and Chief Counsel Matters are prepared only upon written request.
 - (2) Interested persons may submit a written request for Board Staff to prepare transcripts described in paragraph (1) of this subdivision. Such requests shall specifically identify the matters to be transcribed.
 - (3) If Board Staff is able to prepare a transcript of a recorded hearing, the Board will charge a fee to prepare the requested transcript in accordance with section 5000.5034.
 - (4) Written requests for transcripts should be directed to:

State Board of Equalization

Attn: Transcript Coordinator
Board Proceedings Division, MIC: 810
P. O. Box 942879
Sacramento, CA 94279-00810

~~(2)(5)~~ A transcript prepared pursuant to this section is a public record and subject to disclosure. ~~The Board will charge a fee to prepare a transcript or copy a previously prepared transcript in accordance with section 5034.~~

~~(3)(6)~~ Completed transcripts, and untranscribed shorthand notes, (and recordings) are retained up to 12 years following the hearing date. Written requests for copies of previously completed transcripts should be sent to the address provided in paragraph ~~(4)~~ of this subdivision. The Board shall charge a fee in accordance with section 5000.5034 for copying a completed transcript.

Note: Authority:	<u>Article XIII, section 11 of the California Constitution.</u> <u>Section 15606, Government Code.</u> <u>Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,</u> <u>38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,</u> <u>Revenue and Taxation Code.</u> <u>Sections 42475, 42881, Public Resources Code.</u>
Reference:	<u>Article XIII, section 11 of the California Constitution.</u> <u>Sections 6254, 11124.1, 11125.1, 15606, 15619, Government Code.</u> <u>Sections 251, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651,</u> <u>11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705,</u> <u>38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609,</u> <u>42475, 42881, Revenue and Taxation Code.</u> <u>Sections 42475, 42881, Public Resources Code.</u>
History:	<u>California Code of Regulations, title 18, section 5083, 5085.</u>

5000.5033.1- Waiver of Confidentiality (Second Alternative).

Oral hearings are generally conducted during open session at public meetings held in accordance with Government Code sections 11120 and 11123.

(a) Appeals from Actions of the Franchise Tax Board. The filing of an appeal pursuant to ~~part~~chapter 4 constitutes a waiver of the appellant's right to confidentiality with regard to all of the information provided to the Board by the appellant or the Franchise Tax Board ~~directly relevant to such appeal.~~

(b) Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees. ~~The filing of a taxpayer submits a written request for an oral hearing before the Board pursuant to part~~chapter 2, the request for an oral hearing shall constitute a waiver of the taxpayer's right to confidentiality with regard to its case or controversy. Such waiver shall only apply to information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's oral hearing before the Board or included in the hearing summary prepared for the taxpayer's directly relevant to the issues to be discussed or decided by the Board at the oral hearing before the Board.

(c) Property Taxes.

(1) A taxpayer waives its right to confidentiality ~~when with regard to its case or controversy~~ if the taxpayer:

(A) Files a petition pursuant to article 1, 3, or 4 of ~~part~~chapter 3, and submits a written request for an oral hearing before the Board; ~~or~~;

(B) Files an application pursuant to article 2 of ~~part~~chapter 3.

(2) ~~The~~Such waiver described in paragraph (1) of this subdivision shall only apply to:

(A) The taxpayer's petition or application filed pursuant to chapter 4 of this division, and any documents filed in support of the petition or application;

(B) Any briefs filed in response to or in support of the taxpayer's petition or application, and any documents filed in support of such briefs;

(C) The hearing summary or summary decision prepared for the taxpayer's oral hearing before the Board; and

(D) Any other information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's oral hearing before the Board ~~directly relevant to the issues to be discussed or decided by the Board at the~~.

(d) Effective Date of Waiver.

(1) ~~A~~The waivers described in subdivisions (b) ~~or and~~ (c) of this section ~~is~~are effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's oral hearing~~containing the case or controversy to which the waiver applies.~~

(2) ~~A~~The waivers described in subdivisions (b) ~~or and~~ (c) may be rescinded by ~~are ineffective if the taxpayer has at any time before it becomes effective, if the taxpayer agrees to waived its right to an oral hearing before the Board's issuance of the first Public Agenda Notice containing the case or controversy.~~

(e) Exceptions.

(1) Protection from Identity Theft~~Personal Information~~.

(A) The waivers described in subdivisions (a), (b), and (c) do not apply to any person's address, telephone number, social security number, federal identification number, or other account number, and such information will not be provided to the public in response to a request

made pursuant to the California Public Records Act (Gov. Code, §§ 6250 et seq.).

(B) Nothing in this paragraph shall prohibit any party to a Board hearing, Board Members, or Board Staff from referring to information described in this paragraph in briefs filed pursuant to this division, or in a manner that will not disclose any person's actual address, telephone number, social security number, federal identification number, or bank account number at an oral hearing conducted during an open session at a public meeting.

~~(2) Tax Returns. The waivers described in subdivisions (a), (b), and (c) only apply to the portion of a tax return that is directly relevant to the issues to be discussed or decided by the Board at the oral hearing on the taxpayer's case or controversy.~~

~~(3)~~ (2) Closed Session Exemption by Board. The waivers described in subdivisions (b) and (c) do not apply to:

(A) Information that is discussed at an oral hearing conducted during a closed session held pursuant to Government Code section 11126, and the procedures contained in section 5000.5033.2; and

(B) Hearing summaries prepared for oral hearings conducted during a closed session.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Article XIII, section 11 of the California Constitution.

Sections 6254, 11124.1, 11125.1, 15606, 15619, Government Code.

Sections 251, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609, 42475, 42881, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

History: California Code of Regulations, title 18, section 5083, 5085.

5000.5033.2. Request for Oral Hearing Conducted During Closed Session (Second Alternative).

(a) Board's Discretion to Conduct Oral Hearings During Closed Session.

(1) In general, the Board may conduct oral hearings requested pursuant to chapter 2 or chapter 3 of this division during a closed session held pursuant to Government Code section 11126.

(2) The Board may not conduct oral hearings requested pursuant to the following provisions during a closed session:

(A) Article 2 of chapter 3 of this division regarding the assessment of unitary or non-unitary property, or an electric generation facility as defined in Revenue and Taxation Code section 721.5.

(B) Chapter 4 of this division regarding appeals from the actions of the Franchise Tax Board.

(b) Contents of Requests. Taxpayers may request that the Board conduct an oral hearing requested pursuant to chapter 2 or chapter 3 during a closed session. Such a request shall be in writing, specifically identify the matter for which the taxpayer's oral hearing was requested, and describe the trade secrets or other confidential research, development, or commercial information, which is likely to be presented at the taxpayer's oral hearing, the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression, nature of the sensitive information, and contain a concise statement explaining why disclosure of the sensitive information would be harmful to the taxpayer.

(c) Manner of Filing and Due Date for Requests. Requests described in subdivision (b) shall be filed with ~~mailed to~~ the Chief of Board Proceedings in the manner provided at the address provided in section 5000.5027, subdivision (a) no later than the due date of the Response to Notice of Board Hearing provided in section 5000.5006.

(d) Review of Requests.

(1) Chief Counsel's Review and Recommendation. Upon receipt of a taxpayer's request for the Board to conduct an oral hearing during a closed session, the Chief Counsel shall:

(A) Review the request to determine whether the matter for which the taxpayer's oral hearing was requested involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person;

(B) Prepare a written recommendation to grant or deny the request; and

(C) Submit the taxpayer's request along with the recommendation to the Board Chair.

(3) Board Chair's Discretion. Upon receipt of a taxpayer's request for the Board to conduct an oral hearing during a closed session and the Chief Counsel's recommendation, the Board Chair may direct the Chief of Board Proceedings to schedule the taxpayer's oral hearing so that it shall be conducted during a closed session, if the Board Chair determines that:

(A) The matter for which the taxpayer's oral hearing was requested involves trade secrets or other confidential research, development, or

commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person; and

(B) Such information is likely to be disclosed if the taxpayer's oral hearing is conducted during an open session at a public meeting.

(4) If an oral hearing is scheduled to be conducted during a closed session pursuant to paragraph (3) of this subdivision, the oral hearing shall be so conducted unless a majority of the quorum present during the closed session votes in favor of a motion to conduct the oral hearing during an open session.

(5) If a motion is passed in accordance with paragraph (4) of this subdivision, the taxpayer's oral hearing shall be rescheduled so that it can be conducted during an open session at a public meeting, and the Chief of Board Proceedings shall issue a new Notice of Board Hearing in accordance with section 5000.5006.

(A) The waivers described in subdivision (b) or (c) of section 5000.5033.1 are effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's rescheduled oral hearing.

(B) The waivers described in subdivision (b) or (c) of section 5000.5033.1 may be rescinded by the taxpayer at any time before they become effective, if the taxpayer agrees to waive its oral hearing before the Board.

(e) Notice of Board Chair's Decision. The Chief of Board Proceedings shall notify the taxpayer of the Board Chair's decision on its request for an oral hearing conducted during a closed session no later than five days prior to the issuance of the Public Agenda Notice described in section 5000.5033.1, subdivision (d).

(f) Definitions. The phrase "trade secrets or other confidential research, development, or commercial information the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression" shall be interpreted in the same manner as the terms used therein are interpreted or defined for purposes of Code of Civil Procedure section 2031.060.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.

Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.

Reference: Article XIII, section 11 of the California Constitution.

Sections 6254, 11124.1, 11125.1, 15606, 15619, Government Code.

Sections 251, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609, 42475, 42881, Revenue and Taxation Code.

Sections 42475, 42881, Public Resources Code.
History: California Code of Regulations, title 18, section 5083, 5085.

5000.5033.3. Privilege (Second Alternative).

The waivers provided for in section 5000.5033.1 do not abrogate the Board's privileges with regard to ~~m~~Memoranda from attorneys in the Board's Legal Department~~Staff~~ and the Attorney General to Board Members that are confidential communications between client and lawyer as defined in Section 952 of the Evidence Code.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.
Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,
38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,
Revenue and Taxation Code.
Sections 42475, 42881, Public Resources Code.
Reference: Section 6254, Government Code.
Section 954, Evidence Code.
History: California Code of Regulations, title 18, section 5083, 5085.

5000.5034 Fees: Filing, Subpoenas, Transcripts, and Copies.

- (a) The Board does not charge a fee for the filing of any paper or the issuance of a subpoena, but may charge a fee for serving a subpoena in accordance with section 5000.5013.
- (b) Charges for transcripts of testimony heard before the Board shall be made at the rates specified in Section 69950 of the Government Code.
- (c) Copies, including certified copies, of records that the Board is permitted by law to divulge shall be furnished to taxpayers and litigants~~or~~ other interested persons at cost as specified in Section 6253 of the Government Code and Section 1798.33 of the Civil Code.

Note: Authority: Article XIII, section 11 of the California Constitution.
Section 15606, Government Code.
Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,
38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601,
Revenue and Taxation Code.
Sections 42475, 42881, Public Resources Code.
Reference: Section 1798.33, Civil Code.
Section 15613, Government Code.